

## **U.S. SMALL BUSINESS ADMINISTRATION**

### **Statement of Regulatory Priorities**

#### Overview

The mission of the U.S. Small Business Administration (SBA) is to maintain and strengthen the Nation's economy by enabling the establishment and viability of small businesses, and by assisting in the physical and economic recovery of communities after disasters. In accomplishing this mission, SBA strives to improve the economic environment for small businesses, including: those in rural areas, in areas that have significantly higher unemployment and lower income levels than the Nation's averages, and those in traditionally underserved markets.

SBA has several financial, procurement, and technical assistance programs that provide a crucial foundation for those starting or growing a small business. For example, the Agency serves as a guarantor of loans made to small businesses by lenders that participate in SBA's programs. The Agency also licenses small business investment companies that make equity and debt investments in qualifying small businesses using a combination of privately raised capital and SBA guaranteed leverage. SBA also funds various training and mentoring programs to help small businesses, particularly businesses owned by women, veterans, minorities, and other historically underrepresented groups, gain access to Federal government contracting opportunities. The Agency also provides management and technical assistance to existing or potential small business owners through various grants, cooperative agreements, or contracts. Finally, as a vital part of its purpose, SBA also provides direct financial assistance to homeowners, renters, and businesses to repair or replace their property in the aftermath of a disaster.

#### Reducing Burden on Small Businesses

SBA's regulatory policy reflects a commitment to developing regulations that reduce or eliminate the burden on the public, in particular the Agency's core constituents—small businesses. SBA's regulatory process generally includes an assessment of the costs and benefits of the regulations as required by Executive Order No. 12866, 1993, "Regulatory Planning and

Review”; Executive Order No. 13563, 2011, “Improving Regulation and Regulatory Review”; and the Regulatory Flexibility Act. SBA’s program offices are particularly invested in finding ways to reduce the burden imposed by the Agency’s core activities in its loan, grant, innovation, and procurement programs.

#### Openness and Transparency

SBA promotes transparency, collaboration, and public participation in its rulemaking process. To that end, SBA routinely solicits comments on its regulations, even those that are not subject to the public notice and comment requirement under the Administrative Procedure Act. Where appropriate, SBA also conducts hearings, webinars, and other public events as part of its regulatory process.

#### Regulatory Framework

The SBA Strategic Plan serves as the foundation for the regulations that the Agency will develop during the next twelve months. This Strategic Plan provides a framework for strengthening, streamlining, and simplifying SBA’s programs; and leverages collaborative relationships with other agencies and the private sector to maximize the tools small business owners and entrepreneurs need to drive American innovation and strengthen the economy. The plan sets out four Strategic Goals: (1) support small business revenue and job growth; (2) build healthy entrepreneurial ecosystems and create business friendly environments; (3) restore small businesses and communities after disasters; and (4) strengthen SBA’s ability to serve small businesses. The regulations reported in SBA’s semi-annual Regulatory Agenda and Plan are intended to facilitate achievement of these goals and objectives.

Over the past 18 months, SBA’s regulatory activities focused primarily on rulemakings that were necessary to implement the Paycheck Protection Program and the Economic Injury Disaster Loan program, which made it possible for millions of businesses, sole proprietors, independent contractors, certain non-profits, and veterans’ organizations, among other entities, to receive financial assistance to alleviate the economic crisis caused by the COVID-19 pandemic. Over the next 12 months, SBA will take further regulatory action if necessary to tweak requirements for the programs to further advance the country’s economic recovery.

### Administration's Priorities

To the extent possible and consistent with the Agency's statutory purpose, SBA will also take steps to support the Administration's priorities highlighted in *Fall 2021 Data Call for the Unified Agenda of Federal Regulatory and Deregulatory Action* (08/16/2021), namely: (1) actions that advance the country's economic recovery and continue to address any additional necessary COVID-related issues; (2) actions that tackle the climate change emergency; (3) actions that advance equity and support underserved, vulnerable and marginalized communities; and (4) actions that create and sustain good jobs with a free and fair choice to join a union and promote economic resilience in general.

### Advancing the Country's Economic Recovery and Addressing Additional COVID-related Issues

As small businesses across multiple industries continue to face economic uncertainties, SBA will continue to provide financial assistance consistent with existing statutory authorities to help alleviate the financial burdens still facing small businesses. SBA will take steps, including regulatory action where necessary, to modify requirements for its various COVID-related assistance programs to alleviate burdens on eligible program recipients and further advance the country's economic recovery. For example, the interim final rule (RIN: 3245-AH80) included in SBA's Fall Regulatory Agenda expands the number of small businesses, nonprofit organizations, qualified agricultural businesses, and independent contractors within various sectors of the economy that are eligible for a loan under the COVID-EIDL program and also expands the eligible uses of loan proceeds. These and other program amendments made by the rule will increase the flow of funds to the businesses and put them in a better position to recover from the economic losses caused by the pandemic, sustain their operations and retain or hire employees. SBA's other currently available COVID financial assistance programs do not require regulations; however, the Agency is committed to ensuring that they are executed in a manner that are as impactful as the loan program.

### Advancing Equity and Supporting Underserved, Vulnerable, and Marginalized Communities

As evidenced by SBA's equity assessment report, the Agency has made great strides in identifying potential barriers facing underserved and marginalized communities and ways in which

SBA can help to overcome those barriers. The responsive actions identified to date do not require regulations for implementation and include the following: promoting greater access for small businesses to all our programs including addressing language and cultural differences and social economic factors; targeting lending groups that work with underserved communities; improving outreach through technology and addressing digital/technological divide. To help identify gaps and develop a more targeted outreach effort, SBA will continue to revise information collection instruments and enter into agreements with federal statistical agencies to gather demographic data on recipients of its programs and services.

#### Tackling the Climate Change Emergency and Promoting Economic Resilience

To help combat the climate change crisis, SBA is implementing a multi-year priority goal to help prepare and rebuild resilient communities by enhancing communication efforts for mitigation. SBA's regulations in 13 CFR part 123 contain the legal framework for financing projects specifically targeted for pre-disaster and post-disaster mitigation projects. Proceeds from other SBA financing programs can also be used for mitigating measures. At this point no regulations are necessary to implement any of these options; therefore, SBA will focus its efforts on educating the public on the benefits of investing in mitigation and resilience projects and also on increasing awareness of SBA loan programs that can be used for renovating, retrofitting, or purchasing buildings and equipment to reduce greenhouse gas emissions; improving energy efficiency; or enabling the development of innovative solutions that support the green economy.

#### Regulatory Plan Rule

In the context of its Regulatory Agenda, SBA plans to prioritize the regulations that are necessary to implement new authority for SBA to take over responsibility from the Department of Veterans Affairs (VA) for certifying veteran-owned small businesses (VOSBs) and service-disabled veteran-owned small businesses (SDVOSBs) for sole source and set-asides contracts. Section 862 of the NDAA FY 2021 requires transfer of the program to SBA on January 1, 2023. SBA is prioritizing development of the required rulemaking to ensure that the affected public is aware of the regulatory requirements that will govern the VOSB and SDVOSB certification process at SBA and that the Agency is positioned to begin certifications on the transfer date. This

statutorily mandated program is consistent with SBA's ongoing efforts to support businesses in underserved markets, including veteran-owned small businesses. And as businesses struggle to overcome the financial effects of the COVID pandemic, promulgating the rule before the transfer date will also ensure there is no gap in the certification process. Any delay in certification could adversely impact those VOSBs and SDVOSBs seeking access to the billions of dollars in federal government procurement opportunities and could impact their economic recovery.

**Title: *Service-Disabled Veteran-Owned Small Business Certification* (RIN 3245-AH69)**

The Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business (SDVOSB) Programs, as managed by the Department of Veterans Affairs (VA) in compliance with 38 U.S.C. 8127, authorize Federal contracting officers to restrict competition to eligible VOSBs and SDVOSBs for VA contracts. There is currently no government wide VOSB set-aside program, and firms seeking to be awarded SDVOSB set-aside contracts with Federal agencies other than the VA are required only to self-certify their SDVOSB status. Section 862 of the National Defense Authorization Act, Fiscal Year 2021, Public Law 116-283, 128 Stat. 3292 (January 1, 2021), amended the VA certification authority and transferred the responsibility for certification of VOSBs and SDVOSBs to SBA and created a government-wide certification requirement for SDVOSBs seeking sole source and set-aside contracts.

Before SBA officially takes over responsibility for the certification on January 1, 2023, the Agency must put in place the regulations and other guidance that will govern the certification program at SBA. As a first step in this process, SBA will publish an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public input on how to implement a program that would best serve the needs of America's veterans who aspire to start or grow their businesses and access the billions of dollars in contracts that Federal agencies award annually. SBA will seek comments on how the certification processes are currently working, how they can be improved, and how best to incorporate those improvements into any new certification program at SBA. Shortly after evaluating the comments received on the ANPRM, SBA will issue a proposed rule to set out how the Agency plans to structure the certification program and to solicit final public comments.